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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1450

KIRK WILLIAM McLEAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL SECOND DISTRICT, STATE OF FLORIDA

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QUESTION PRESENTED

WHETHER, CONSISTENT WITH THE FOURTH AMENDMENT, A LAW ENFORCEMENT OFFICER MAY SEIZE PERSONAL LUGGAGE FOR THE PURPOSE OF EFFECTUATING A LINE-UP INSPECTION OF THE LUGGAGE BY A NARCOTICS DETECTION CANINE, IN THE ABSENCE OF A REASONABLE AND ARTICULABLE SUSPICION FOR DOING SO, AFTER THE LUGGAGE HAS BEEN TURNED OVER TO COMMERCIAL AIRLINE PERSONNEL FOR TRANSPORTATION.

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BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

OPINION BELOW

The opinion of the District Court of Appeal, Second District, State of Florida, as reported at 392 So.2d 1384 correctly appears in appendix "A" of the Petition for Writ of Certiorari.

JURISDICTIONAL STATEMENT

Respondent does not question the jurisdictional statement as stated in the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case.

REASONS FOR DENYING CERTIORARI

Petitioner does not contend that the search of his luggage violated the Fourth Amendment. Nor can he, because as he states in his brief (Petitioner's Brief, p. 6) he executed a "Consent to Search and Waiver of Search Warrant."

Petitioner's complaint is that the "seizure" of his luggage, after he had "checked" it in at the terminal with the airlines, for the purpose of having the dog sniff the luggage, tainted any reasonable suspicion that the officer had for the subsequent search of the suitcase.

In essence, Petitioner seeks to have the Court expand the concepts of

United States v. Chadwick, 433 U.S. 1 (1977) and *Arkansas v. Sanders*, 422 U. S. 753 (1979) to the extent that one would have an inevitable expectation of privacy not only as to the contents of his luggage but also as to the outer perimeter of the container. It is beyond imagination that this Court would hold that one has an expectation of privacy in the outside of a container which he not only has exposed to the public but has voluntarily turned over to the possession of another.

Petitioner recognizes that the holding of the Fifth Circuit in *United States v. Goldstein*, 635 F.2d 356 (5th Cir. 1981) is squarely against him. Without citing any case in support of his contentions, he suggests that

". . . the holding in *Goldstein* is without support in law" (Petitioner's Brief, p.10). Consequently, it is manifest that the decision of the court below does not conflict with any decision of this Honorable Court or of a Circuit Court of Appeals.

Furthermore, since the lower court did not write an opinion, it is impossible to determine whether it based its decision on the fact that Petitioner had no reasonable expectation of privacy as to the luggage itself or whether it based its decision on the conclusion that any illegality in the "seizure" of the luggage was purged in consenting to a search of its contents.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, CHARLES CORCES, JR., Counsel for Respondent, and a member of the Bar of the United States Supreme Court, hereby certify that on the _____ day of May, 1981, I served three copies of the Brief in Opposition to Petition for Writ of Certiorari on Joel Hirschhorn, Esquire, 742 Northwest 12th Avenue, Miami, Florida 33136, by a duly addressed envelope with postage prepaid.

CHARLES CORCES, JR.
Assistant Attorney General